Supreme Court, U.S.
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No. 01-1069

In The

Supreme Court of the United States

A. GRIFFIN,

Petitioner,

vs.

CITY OF OPA LOCKA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Should the Court, in its certiorari discretion, review *Griffin v. City of Opa Locka and Earnie Neal,* 261 F.3d 1315 (11th Cir. 2001) (Pet. App. A), which reversed the District Court's (Southern District of Florida) decision awarding Petitioner $1,500,000 against the City of Opa Locka for the sexual assault of Petitioner by then City Manager, Earnie Neal.

Stated otherwise, are there special and important reasons for the Court to exercise its certiorari jurisdiction where the Eleventh Circuit, in reversing the District Court's judgment as to the City's 42 U.S.C. § 1983 liability for the sexual assault of Angelita Griffin by Earnie Neal, has not rendered a decision which conflicts with any other Federal Court on the same issue?

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BRIEF IN OPPOSITION

Respondent, City of Opa Locka, Florida, opposes the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit Court in the above-entitled case.

OPINION AND JUDGMENT BELOW

Following a jury trial, the United States District Court for the Southern District of Florida issued a Final Judgment against the City of Opa Locka ("City" or "Respondent") and Earnie Neal ("Neal") for $2,000,000.00, stemming from Neal's sexual harassment and sexual assault of Petitioner, Angelita Griffin ("Griffin" or "Petitioner"). The jury assessed Petitioner's damages as $500,000.00 for the workplace harassment of Griffin by Neal, and $1,500,000.00 as a result of Neal's sexual assault of Griffin.

Both the City and Neal appealed the District Court's judgment. The City argued, inter alia, that it should not be liable under 42 U.S.C. § 1983 ("§ 1983") for the sexual assault of Griffin because (1) there was insufficient evidence to support the jury's finding that the sexual assault was committed "under color of law;" and (2) that there was no evidence that the City maintained a custom or policy of permitting or condoning sexual assault. On August 17, 2001, after the parties had filed briefs and presented oral argument, the United States Court of Appeals for the Eleventh Circuit affirmed the District Court's final judgment as against Neal on all claims, affirmed the judgment against the City for the workplace

harassment, and reversed the judgment against the City as to the City's liability for the sexual assault of Griffin under § 1983. Specifically, the Court of Appeals found that because the jury had not made any finding as to whether the sexual assault was part of a custom or policy at the City, the City could not be held liable under § 1983. The Court of Appeals wrote:

> The jury, however, rendered no express finding as to whether the City had a similar custom or policy of ignoring or tolerating rape or sexual assault. Nor did the jury verdict refer to the rape incident as part of the policy or custom of sexual harassment such that § 1983 liability for the rape could be sustained based on the custom of harassment. Because the record does not establish that the jury found that the City had a custom or policy of allowing rape or that the rape incident was part of the custom or pattern of sexual harassment, we cannot reasonably say that the jury found all essential aspects of the § 1983 case against the City. As such, the verdict and judgment against the City for the rape cannot stand.

(Pet. App. 32a).

The Court of Appeals expressly declined to address whether the evidence was sufficient to establish a policy or custom of condoning sexual assault and in a concurring opinion, Chief Judge Anderson wrote that he did not join in the portion of Judge Fay's opinion which held that Neal acted under color of state law in committing the sexual assault.

Thereafter, Petitioner filed a Motion for Rehearing with the Court of Appeals wherein Petitioner argued, as

she does in the instant Petition for Writ of Certiorari, that the Court of Appeals failed to follow the provisos of Rule 49(a) of the Federal Rules of Civil Procedure. The Court of Appeals, in an unreported decision, denied Petitioner's Motion for Rehearing.

STATEMENT OF THE CASE

This is an employment related lawsuit. Petitioner, Angelita Griffin, sued her former employer, the City of Opa Locka, and the former City Manager, Earnie Neal, seeking damages based on workplace sexual harassment and the sexual assault of Griffin by Neal on November 1, 1995, at Griffin's North Miami apartment. The trial commenced on March 20, 2000 in the Southern District of Florida. On March 31, 2000, the jury rendered a verdict in favor of Griffin in the amount of $2,000,000.00. The jury awarded Petitioner $1,500,000.00 for the November 1, 1995 sexual assault of Griffin by Neal and $500,000.00 for the workplace sexual harassment of Griffin by Neal. On April 5, 2000 the Court entered a judgment in accordance with the verdict.

The City of Opa Locka is located in north west Miami-Dade County and is a relatively small municipality which employs less than 200 persons. (Pet. App. 3a). Petitioner began her employment with the City in 1992 as a temporary worker and eventually became a permanent clerical employee at the City. In June of 1995, the City Commission hired Neal to be the City Manager. The City has a manager/commission form of government

in which an appointed manager serves as the chief executive officer and an elected commission serves as the board of directors. (Pet. App. 3a). From June 13, 1995 until her departure from the City in early November 1995, Griffin perceived that she was sexually harassed by Neal. On October 26, 1995, Griffin tendered her resignation to the City. (Pet. App. 6a).

On the afternoon of November 1, 1995, Griffin left work at the City and went home to her apartment to get ready to perform as a singer at a Rotary Club function later that evening. Griffin had previously entered into an agreement with the Rotary Club director to sing at an installation dinner and to be paid for her performance. On the way to the Rotary Club function, Griffin damaged her car and following dinner, agreed to accept a ride home from Neal. At approximately 11:00 p.m., Neal drove Griffin to her gated and security patrolled apartment complex in North Miami, outside of the city limits of Opa Locka. (Pet. App. 6a). Griffin testified that Neal helped her carry her karaoke machine up to the apartment and that Neal entered the apartment without an invitation. After entering the apartment, Neal sexually assaulted Griffin. (Pet. App. 6a).

After a jury trial on Petitioner's claims, the jury returned a verdict for $2,000,000.00: $500,000.00 for the sexual harassment and $1,500,000.00 based on the sexual assault. The District Court entered judgment and the Eleventh Circuit Court of Appeals reversed the District Court's judgment as against the City for the sexual assault of Griffin by Neal based on the fact that the jury

had not found that the City had a custom or policy of allowing or condoning sexual assault, a required element to prove municipal liability under 42 U.S.C. § 1983.

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari should be denied because the decision rendered by the United States Court of Appeals for the Eleventh Circuit does not conflict with the applicable decisions of this Court or the decision of another United States Court of Appeals on the same issues and because there are no other special and important reasons for this Court to review the above-entitled case. In reversing the District Court's judgment with regard to the $1,500,000.00 verdict against the City for the sexual assault, the Eleventh Circuit correctly applied the well-settled law established by this Court regarding § 1983 liability and rendered a decision which is completely consistent with the prior relevant decisions of this Court and those of other United States Courts of Appeals on the same issue.

ARGUMENT

I. THE COURT SHOULD NOT EXERCISE ITS DISCRETIONARY JURISDICTION OVER THE ISSUE RAISED BY PETITIONER

A. The Eleventh Circuit Has Not Addressed The Issue Raised In The Petition For Writ Of Certiorari.

The issue which Petitioner seeks to have this Court review is one which the Court of Appeals did not address in its opinion and declined to address in its ruling on Petitioner's Motion for Rehearing. The issue was never briefed by the parties below and was not raised at the oral argument before the Court of Appeals. Essentially, Petitioner would have this Court review an issue on which the Eleventh Circuit has not rendered an opinion.

Petitioner requests that this Court reverse the Court of Appeals based on Rule 49(a) of the Federal Rules of Civil Procedure ("Rule 49(a)") which provides for the use of special verdict interrogatories at trial. In essence, Petitioner wants this Court to remand the case to the Court of Appeals for a determination of whether the City had a policy or custom of allowing sexual assault on the basis that the Eleventh Circuit opinion failed to adhere to Rule 49(a). There is absolutely no precedent for such a reversal. The reversal would be based on issues of law that were not discussed in the Court of Appeal's initial opinion rendering the reversal as to the City's liability for the $1,500,000.00, and which the Court of Appeals did not address in its one word denial of the Motion for Rehearing.

Only in exceptional cases has this Court assumed jurisdiction over an issue which was neither addressed nor decided by the Court of Appeals. *Duignan v. United States*, 47 S. Ct. 566, 568 (1927). In *Duignan*, the Court stated as follows: "This Court sits as a court of review. It is only in exceptional cases coming here from the federal courts that questions not pressed or passed upon below are reviewed." *Id.* at 568. *See also, Lawn v. United States*, 78 S. Ct. 311, 324 (1958) ("Only in exceptional cases will this Court review a question not raised in the court below.")

Notably, Petitioner's Motion for Rehearing did not seek a rehearing en banc before the Court of Appeals, but rather only a panel rehearing. Accordingly, Petitioner is asking the Supreme Court to take jurisdiction over an issue which Petitioner did not request review of by the Court of Appeals, en banc.

The Court's past decisions regarding the exercise of jurisdiction do not suggest that this is a case over which this Court should exercise jurisdiction. The issue which Petitioner seeks to have this Court review is one which was not addressed by the Court of Appeals in its opinion and one which the Court of Appeals declined to take up when invited to do so in Petitioner's Motion for Rehearing. In fact, the issue has never been briefed by the parties. If this Court accepts jurisdiction as requested by Petitioner, this Court would be hearing this issue for the first time, as opposed to reviewing a decision made by the Court of Appeals.

B. The Eleventh Circuit's Decision Does Not Conflict With Any Decision Of The Supreme Court Or Any Other Courts Of Appeals.

The decision of the Eleventh Circuit does not conflict with any prior decisions of this Court or any other circuit court decisions. Specifically, Petitioner's suggestion that the Eleventh Circuit's decision conflicts with decisions out of the Second, Fifth, Eighth and Tenth Circuits is wholly unfounded. *See Bradway v. Gonzalez*, 26 F.3d 313, 316-317 (2nd Cir. 1994); *McConney v. City of Houston*, 863 F.2d 1180, 1186 (5th Cir. 1989); *Furr v. AT&T Technologies, Inc.*, 824 F.2d 1537, 1544-1545 (10th Cir. 1987); *Associated Engineers, Inc. v. Grand Electric Cooperative, Inc.*, 370 F.2d 633, 642-643 (8th Cir. 1967).

Several critical distinctions, both factual and legal, preclude any conflict between the Eleventh Circuit's decision and the decisions referenced above. Principally among these is the fact that in the instant case the Eleventh Circuit has not addressed the issue of Rule 49(a) and the standards surrounding its application. As such, the Court of Appeals has not issued any opinion discussing the issue of which Petitioner seeks review and Petitioner can point to no conflict with other circuits. The Court of Appeals' decision does not establish any rule of law with regard to the application of Rule 49(a).

The Eleventh Circuit's decision in *Griffin v. City of Opa Locka*, 261 F.3d 1315 (11th Cir. 2001), and the cases referred to by Petitioner are not in conflict. For this reason, the Petition for Writ of Certiorari should be denied.

C. The Issue Raised By Petitioner Is Case Specific And Non-Dispositive.

This Court should also decline to accept jurisdiction because the issue raised in the Petition for Writ of Certiorari is case-specific and depends on whether the subject Verdict Form is regarded as a Special Verdict (Rule 49(a)) or a General Verdict Accompanied by Answer to Interrogatories (Rule 49(b)). A determination on the merits would impact only the instant case and not any broader principles of law. Indeed, resolution of the issue raised by Petitioner would not be determinative of the instant case but rather would require remand to the Court of Appeals to address whether the record contains sufficient evidence of a municipal policy or custom so as to impose § 1983 liability on the City.

D. Rule 49(a) Is Not Applicable To The Verdict Form At Issue.

The Verdict Form utilized by the trial court in this matter is not a Special Verdict as discussed in Rule 49(a). Rather, the Verdict Form used by the trial court constitutes a General Verdict Accompanied by Answer to Interrogatories as referenced in Rule 49(b). The Eleventh Circuit's opinion never references the issue of Rule 49(a) and special interrogatory verdicts nor does it find that the Subject Verdict Form constitutes a "special verdict," despite a detailed discussion of the Verdict Form in the Court's opinion and the jury's response to questions presented therein. (Pet. App. 32a-33a). It is clear that the Verdict Form utilized by the trial court in this matter is not subject to the Rule 49(a) provision regarding waiver

on which Petitioner relies. As such, this Court should decline to exercise jurisdiction over this matter.

This Court addresses the merits of a select few cases from the many which are placed before it for consideration. *See Torres-Valencia v. United States*, 464 U.S. 44 (1983). If the instant case raised a novel question of federal law, or presented a significant conflict between the circuits, jurisdiction for the purpose of clarifying the law might be merited. This case, however, presents no such considerations or issues. Accordingly, this Court should deny the Petition for Writ of Certiorari.

II. PETITIONER HAS SUFFERED NO INJUSTICE AS A RESULT OF THE ELEVENTH CIRCUIT'S DECISION.

No injustice has resulted from the decision rendered by the Court of Appeals. The judgment for $2,000,000.00 as against Neal, the individual who perpetrated the sexual assault, was affirmed by the Court of Appeals. Further, Petitioner has already received payment in full satisfaction of the $500,000.00 judgment entered against the City and affirmed by the Court of Appeals.

Further, the Court of Appeals determination as to the City's liability under 42 U.S.C. § 1983 for the sexual assault of Petitioner by Neal was correct. The City had no responsibility for the sexual assault of Griffin because Neal was not acting under color of state law when the

assault occurred. *See* Respondent's Conditional Cross Petition for Writ of Certiorari.

CONCLUSION

Respondent respectfully submits that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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